

**Appl. No.** : **09/991,721**  
**Filed** : **November 13, 2001**

### **REMARKS**

Claims 1-13, 15, 17, 18, 25, and 45-50 are pending in this application. Amendments to the claims: None. Reexamination and reconsideration of the application, as amended, are respectfully requested.

**A. Compliance with 35 USC 103(a)**

The U.S. Patent and Trademark Office (USPTO) rejected the claims under 35 USC 103(a) as being unpatentable over Mastrangelo et al. (1995) WO 95/31105 in view of Dorner et al. USP 6,103,244 and further in view of Buller et al. (1988) J Virol 62: 866; additional claims further in view of Zhang et al. (1996) Biochem Biophys Res Commun 227: 707; and further claims further in view of Paoletti USP 5,942,235 (as further evidenced by P04637). The rule according to MPEP2143 is that, to establish a case of obviousness, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or combine reference teachings. Additionally, the rule according to MPEP 716.02 is that unexpected results rebut a case of obviousness. Here, as attested to by Drs. Bartlett and Moss, named inventors and experts in the field of vaccinia viruses, the prior art failed to provide the suggestion to combine references, and, moreover, unexpected results rebut any case of obviousness. As for MPEP 716.01 II, evidence of unexpected results is supported by expert testimony. Finally, as attested to by Drs. Bartlett and Moss, here, synergism, which is undisputed, evidences nonobviousness. Thus, considering all the factors related to the nonobviousness issue, it must be concluded that the claims are nonobvious over the references and in compliance with 35 USC 103(a).

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### CONCLUSION

In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of all outstanding rejections are respectfully requested. Allowance of the claims at an early date is solicited. If any points remain that can be resolved by telephone, the Examiner is invited to contact the undersigned at the below-given telephone number.

Respectfully submitted,

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Dated: 5/31/06

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AMEND

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